

Remarks

Claims 1-14 are pending in the present application, each of which has been rejected. Applicant respectfully requests reconsideration of the pending claims in view of the following remarks.

Drawings

The Office Action Summary makes no indication as to whether the drawings of the present application, as originally submitted on December 9, 2003, have been accepted. Applicant kindly requests the Examiner to review the drawings and make an appropriate indication in the next Office Communication.

Obviousness Rejection

Claims 1-14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Appl. Pub. No. 2003/0140353, filed by Hugenberg *et al.* (hereinafter "*Hugenberg*"), in view of U.S. Patent Appl. Pub. No. 2006/0041921, filed by Hane (hereinafter "*Hane*"). Applicant respectfully traverses this rejection because the proposed combination fails to teach or suggest each and every feature of the pending claims.

Claim 1 is directed to a method for use in a cable television network to provide public, educational and governmental (PEG) programming pursuant to an agreement with a local franchising authority for a local area, and includes the following steps:

providing a PEG channel in a channel lineup for the local area in accordance with the local franchising authority agreement;
providing backdrop programming on the PEG channel, the backdrop programming being general local interest programming provided by the cable television network;

determining an availability of locally produced PEG programming; and

when locally produced PEG programming is available and intended for local broadcast, preempting the backdrop programming and providing the locally produced PEG programming on the PEG channel thereby providing locally produced PEG programming against a backdrop of general local interest programming provided by the cable television network.

(Emphasis added.)

Backdrop programming is general local interest programming provided by the cable television network containing subjects of universal local interest complimentary to programming that is traditionally associated with a local PEG channel (*e.g.*, original quality programming created by a content provider). (See *Specification*, pp. 2-3.) The Office Action contends that *Hugenberg* teaches the aforementioned feature of "providing backdrop programming *on the PEG channel*," as recited in independent claim 1. (Office Action, page 2.) This contention is respectfully traversed.

Initially, it is noted that the Office has not specifically cited in *Hugenberg* the text which discloses the elements of the present claims, and therefore, has failed to provide an adequate *prima facie* case of obviousness. Rather, the Office Action merely recites selective portions of Applicant's claim (disregarding the aforementioned feature), concludes that the recited portions are taught by *Hugenberg*, and states some reasoning for the Office's conclusion that ignores the aforementioned feature of "providing backdrop programming *on the PEG channel*." Specifically, the Office Action states that *Hugenberg* teaches a cable TV network providing PEG programming and "a PEG channel in the channel lineup with respective backdrop programming for each local area as required by the local franchising authority agreement." (Office Action, p. 2.) The Office Action adds that "PEG channels are well known in the art as being part of the cable television programming and where [*sic*] to function in a local area, permission from local authorities are inherently needed." *Id.* This does not specifically address the expressly recited feature of claim 1 of "providing backdrop programming *on the PEG*

channel." Thus, for at least this reason, the rejection based upon the combination of *Hugenberg* and *Hane* cannot be maintained.

Hugenberg discloses a digital headend architecture for use in a full service A/V programming distribution network to selectively provide programming from variety of digital and analog sources. (Abstract.) One of the programming sources disclosed in *Hugenberg* to be handled by the headend architecture is locally-sourced A/V programming including PEG programming received by an antenna system. (§§[0036]-[0037]; [0042].) The PEG channels, after processing, are combined with other channels from various other sources and distributed together to a customer as part of a channel line-up. (§[0042].) *Hugenberg*, however, fails to teach "providing backdrop programming on the PEG channel," as recited in claim 1. *Hane* fails to cure the deficiencies of *Hugenberg*. Instead, *Hane* merely discloses a system for integrating locally-originated programming into the breaks of national network broadcasts by remotely controlling input source selection at an end customer's set-top box. (Abstract.)

Additionally, the proposed combination fails to teach or suggest the backdrop programming on the PEG channel "being generally local interest programming," as recited in claim 1. Again, the Office Action fails to address this expressly recited feature, which results in a failure to provide an adequate *prima facie* case of obviousness. For at least this reason, the rejection cannot be maintained. Notwithstanding the failure to meet the initial burden of examination, the combination of *Hugenberg* and *Hane* does not disclose "the backdrop programming being generally local interest programming provided by the cable television network." *Hugenberg* merely discloses locally-sourced A/V programming including PEG programming received by an antenna system of a headend architecture. (§§[0036]-[0037]; [0042].) The PEG channels, after processing, are combined with other channels from various other sources and distributed together to a customer as part of a channel line-up. (§[0042].)

Hane is also silent as to this feature and, thus, fails to cure the deficiencies of *Hugenberg*. Rather, *Hane* merely discloses that during breaks in national network broadcasts

(e.g., CNN, USA, etc.) locally-originated programming can be integrated into the national broadcast channel to provide a local or regional feel between nationally broadcast segments. (Abstract; ¶¶ [0015] and [0020].) This is achieved by remotely controlling input source selection of a customer's STB and switching input sources during anticipated breaks in the national broadcasts. *Id.* The input may be switched to local network channels (e.g., local affiliates of NBC, ABC, CBS, FOX) for local news, or to databases and servers for displaying advertisements that fit into the break and are to be aired in select local markets. (¶ [0033].) In this regard, *Hane* fails to disclose "the backdrop programming being generally local interest programming," as recited in claim 1. Thus, for at least this reason, the rejection based upon the combination of *Hugenberg* and *Hane* cannot be maintained.

The Office further contends that *Hane* teaches "preempting the backdrop programming and providing the locally produced PEG programming on the PEG channel," as is also recited in claim 1. (Office Action, p. 3.) To the contrary, *Hane* merely discloses integrating local programming into a national network broadcast channel during anticipated breaks in the nationally-broadcasted program. (See ¶¶ [0020] and [0039].) The national network broadcast channel is not a PEG channel, and its programming is not backdrop programming. Moreover, the nationally-broadcast programs *are not preempted* by PEG channel content (or other local programming, for that matter). Instead, the *Hane* system inserts local programming into the national network channel broadcast during breaks in between segments. *Id.* *Hugenberg* fails to cure the deficiencies of *Hane*.

Accordingly, favorable reconsideration and withdrawal of the rejection of independent claim 1 and associated dependent claims under 35 U.S.C. §103 for at least the reasons set forth above is respectfully requested.

In the event that the Office does maintain the rejection of independent claim 1 under 35 U.S.C. §103, Applicant respectfully requests that the Office, in the interests of compact prosecution, identify on the record and with specificity sufficient to support a *prima facie* case

of obviousness, where in the cited references the subject features of independent claim 1 of "providing backdrop programming *on the PEG channel*" and "the backdrop programming being *generally local interest programming*" are alleged to be taught.

Independent claim 8 is directed to a method for use in a cable television network to provide public, educational and governmental (PEG) programming pursuant to agreements with local franchising authorities for local areas, and includes features substantially similar to the features recited in claim 1. Thus, the rejection of claim 8 is believed to be improper for at least the same reasons set forth above with respect to claim 1. Accordingly, favorable reconsideration and withdrawal of independent claim 8 and associated dependent claims under 35 U.S.C. § 103 is respectfully requested.

CONCLUSION

In view of the foregoing, Applicant respectfully submits that the independent claims patentably define the present invention over the citations of record. Further, the dependent claims should also be allowable for the same reasons as their respective base claims and further due to the additional features that they recite. Separate and individual consideration of the dependent claims is respectfully requested. Applicant believes that all formal and substantive requirements for patentability have been met and that this case is in condition for allowance, which action is respectfully requested.

In light of the Office's failure to establish a *prima facie* case of obviousness with respect to several of the claims, Applicant submits that, if necessary, any subsequent Office Action rejection maintaining the claim rejections should be non-final.

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Respectfully submitted,

TERRY S. BIENSTOCK

By /Michael D. Cushion/

Michael D. Cushion

Reg. No. 55,094

Attorney for Applicant

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BROOKS KUSHMAN P.C.
1000 Town Center, 22nd Floor
Southfield, MI 48075-1238
Phone: 248-358-4400
Fax: 248-358-3351